

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 2003-1105-010-092

vs.

Michael Rostock, R.N., Lic. No. E56008
Respondent

MEMORANDUM OF DECISION

Procedural Background

The Board of Examiners for Nursing (hereinafter "Board") was presented by the Department of Public Health (hereinafter "Department") with an Interim Consent Order executed by Michael Rostock, R.N. (hereinafter "respondent") and the Department. The Interim Consent Order provided for the registered nurse license of respondent to be suspended for a period of one hundred twenty (120) days pending a resolution of allegations by the Department that respondent engaged in conduct which fails to conform to the accepted standards of the nursing profession. The Interim Consent Order was accepted by the Board on March 17, 2004. Dept. Exh. 2B

On June 16, 2004, the Department presented to the Board a Statement of Charges and Motion for Summary Suspension dated June 4, 2004. Dept. Exh. 2. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by respondent which would subject his registered nurse license to disciplinary action pursuant to Conn. Gen. Stat. §§ 19a-17 and 20-99(b).

Based on the allegations in the Statement of Charges and accompanying affidavits and reports, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety. On July 16, 2004, the Board ordered, pursuant to its authority under §§ 4-182(c) and 19a-17(c) of the General Statutes of Connecticut, that respondent's registered nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges. Dept. Exh. 1.

The Board issued a Notice of Hearing dated June 16, 2004, scheduling a hearing for July 21, 2004. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against him. The Notice of Hearing and Statement of Charges were delivered by certified mail to respondent's attorney. Dept. Exh. 1.

The hearing took place on July 21, 2004, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing and was represented by counsel. Transcript, July 21, 2004, p. 2.

During the hearing, the Department without objection from respondent, orally amended the Statement of Charges by adding a fourth count relating to heroin abuse. Transcript, p. 23-24.

Respondent orally answer the Statement of Charges as amended. Transcript, pp. 4-6, 24.

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record, the law, and the Board's specialized professional knowledge in evaluating the evidence.

Findings of Fact

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Respondent was issued registered nurse license number E56008 on October 1, 1993. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 2D.
2. On or about August 31, 2003, respondent was employed as a registered nurse at Covenant Village of Cromwell, Cromwell, Connecticut (hereinafter "the facility"). Transcript, p. 4.
3. On or about August 31, 2003, while working as a registered nurse at the facility, respondent:
 - a. diverted Plavix, Toprol, Zestril, Zocor and or/Glucotrol;
 - b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
 - c. falsified one or more Controlled Substance Receipt Records
 Dept. Exh. 2A; Transcript, p. 4.
4. Pursuant to an Interim Consent Order dated March 17, 2004, the Board ordered that respondent's registered nurse license be suspended for a period of 120 days. Such disciplinary action was based upon (1) respondent's alleged diversions of patient's supplies and/or non-controlled prescription medications, and (2) respondent's arrest for larceny, illegal possession and possession of drug paraphernalia. Said Order specifically provided that respondent shall execute releases for his treatment records, as requested by the Department. Dept. Exh. 2B.
5. Respondent failed to execute releases or provide any treatment information to the Department from March 17, 2004 to and including June 14, 2004. Dept. Exh. 3.
6. Respondent has a long history of substance abuse and depression, which contributed to relapses. Between approximately March 2003 and September 2003, respondent abused heroin. Transcript, pp 15, 20, 24.

7. On or about September 2, 2003, respondent began outpatient treatment for heroin dependence at the Center for Serenity, West Hartford, Connecticut. Respondent also completed inpatient treatment at Connecticut Valley Hospital, Middletown, Connecticut. Respondent actively participates in alcoholics anonymous. Respondent testified he is not presently engaged in treatment with a therapist. Resp. Exh. A; Transcript p. 24.

Conclusions of Law and Discussion

In consideration of the above Findings of Fact, the following conclusions are rendered:

Michael Rostock, R.N. held a valid registered nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and Statement of Charges provided sufficient legal notice as mandated by Conn. Gen. Stat. §§ 4-177(a) and (b), and 4-182(c). The hearing was held in accordance with Conn. Gen. Stat. Chapters 54 and 368a as well as §§ 19a-9-1 through 19a-9-29 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges, and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by Conn. Gen. Stat. § 4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

The **FIRST COUNT, PARAGRAPH 3** of the Statement of Charges as amended alleges that on or about August 31, 2003, while working as a registered nurse at Covenant Village of Cromwell, Cromwell, Connecticut, respondent:

- a. diverted Plavix, Toprol, Zestril, Zocor, and/or Glucotrol;
- b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
- c. falsified one or more Controlled Substance Receipt Records;

Respondent admits these allegations. Transcript, p. 4.

The **SECOND COUNT, PARAGRAPH 6** of the Statement of Charges as amended alleges that on or about August 31, 2003, while working as a registered nurse at the facility, respondent diverted personal property from patients and/or the facility, including but not limited to toothpaste, denture tabs and/or toilet paper.

Respondent denies this charge. Transcript, pp. 4-6.

The **THIRD COUNT, PARAGRAPH 9** of the Statement of Charges as amended alleges that on March 17, 2004, the Board ordered an Interim Consent Order in Petition No. 2003-1105-010-092

(hereinafter “the Order”) that placed respondent’s registered nursing license on probation for a period of 120 days after the effective date of the Order.

Respondent admits this charge. Transcript, p. 5.

The **THIRD COUNT, PARAGRAPH 10** of the Statement of Charges as amended alleges that said Order specifically provided that respondent shall execute releases for his treatment records, as requested by the Department.

Respondent admits this charge. Transcript, p. 5.

The **THIRD COUNT, PARAGRAPH 11** of the Statement of Charges as amended alleges that respondent has not executed any releases or provided any treatment information to the Department since the signing of the Interim Consent Order.

Respondent neither admits nor denies this charge. Transcript, p. 5.

The **FOURTH COUNT, PARAGRAPH 14** of the Statement of Charges as amended alleges that between approximately March of 2003 and September of 2003, respondent abused heroin.

Respondent admits this charge. Transcript, p. 24.

The **FOURTH COUNT, PARAGRAPH 15** of the Statement of Charges as amended alleges that respondent’s abuse of heroin may affect his ability to practice as a registered nurse.

Respondent admits this charge. Transcript, p. 24.

The General Statutes of Connecticut § 20-99 provides in relevant part:

(a) The Board of Examiners for Nursing shall have jurisdiction to hear all charges of conduct which fails to conform to the accepted standards of the nursing profession brought against persons licensed to practice nursing. After holding a hearing ... said board, if it finds such person to be guilty, may revoke or suspend his or her license or take any of the actions set forth in section 19a-17. ...

(b) Conduct which fails to conform to the accepted standards of the nursing profession includes, but is not limited to, the following ... (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions ... (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals ...

Based on its findings and respondent's admissions, the Board concludes that respondent's conduct as alleged in the First and Fourth Counts of the Statement of Charges, as amended, is proven by a preponderance of the evidence presented. Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to Conn. Gen. Stat. § 19a-17.

With regard to allegations in the Second Count, the Board concludes that the Department did not present sufficient evidence to prove these charges. Therefore, the Second Count of the Statement of Charges, as amended, is dismissed.

With regard to allegations in the Third Count, the Board concludes that respondent did not execute releases or provide treatment records to the Department from March 17, 2004 to and including June 4, 2004, the date of the Statement of Charges. The Third Count of the Statement of Charges, as amended, is proven by a preponderance of the evidence presented. Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to Conn. Gen. Stat. § 19a-17.

The evidence presented indicates that respondent has a long history of substance abuse and relapses. The Board concludes, based on its review of the evidence and respondent's testimony, that despite having engaged in substance abuse treatment, respondent is at high risk of relapse and continued substance abuse at this time. At the present time, respondent can not safely practice nursing even under the terms of a period of probation.

Order

Pursuant to its authority under Conn. Gen. Stat. §§ 19a-17 and 20-99, the Board of Examiners for Nursing hereby orders the following:

For the First Count of the Statement of Charges, as amended, respondent's registered nurse license number E56008, is revoked effective the date this Memorandum of Decision is signed by the Board.

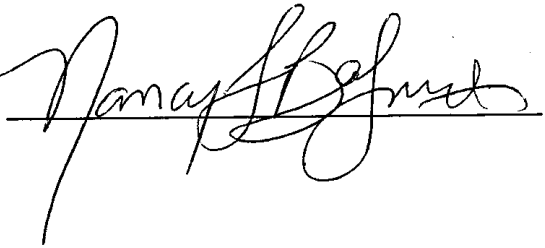
For the Third Count of the Statement of Charges, as amended, respondent's registered nurse license number E56008, is revoked effective the date this Memorandum of Decision is signed by the Board.

For the Fourth Count of the Statement of Charges, as amended, respondent's registered nurse license number E56008, is revoked effective the date this Memorandum of Decision is signed by the Board.

The Board of Examiners for Nursing hereby informs respondent, Michael Rostock, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 3rd day of November 2004.

BOARD OF EXAMINERS FOR NURSING

By 

CERTIFICATION

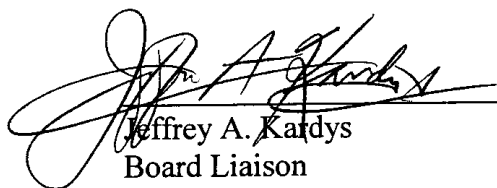
I hereby certify that, pursuant to Connecticut General Statutes §4-180(c), a copy of the foregoing Memorandum of Decision was sent this 4th day of November 2004, by certified mail, return receipt requested to:

Jefferson David Jelly, Esq.
924 Farmington Avenue
PO Box 270697
West Hartford, CT 06127-0697

Certified Mail RRR #70040750000321782602

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Board Liaison
Department of Public Health
Public Health Hearing Office